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SUPREME COURT OF THE UNITED STATES.

No. 55.

JAMES S. BRANDER, AND HUGH L. McKENNA, PLAINTIFFS IN ERROR,

vs.

WM. E. PHILLIPS AND HENRY BELL, UNDER THE FIRM OF WM. E. PHILLIPS AND CO., AND RODAH HORTON, AND NATHANIEL TERRY.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF SOUTH ALABAMA.

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S. D. Langtree, Print.

UNITED STATES OF AMERICA.

The President of the United States to the Judges of the Circuit Court of the United States for the Ninth Judicial Circuit, Southern District of Alabama:

Because in the record and proceedings, and also in the rendition of judgment, in a plea which is in the said circuit court before you, between James S. Brander and Hugh L. McKenna, plaintiffs, and William E. Phillips and Henry Bell, under the firm of Wm. E. Phillips & Co., Rodah Horton and Nathaniel Terry, defendants, a manifest error hath happened, to the great damage of the plaintiffs, as by their complaint appears; and it being fit, if error there be, the same should be duly corrected, and full and speedy justice be done the parties aforesaid; do command you, if judgment be rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the Supreme Court to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further proceedings therein, to correct the error, what of right, according to law and the custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of January, in the year of our Lord one thousand eight hundred and forty.

[L. S.]

Issued the 3d day of August, in the year of our Lord one thousand eight hundred and forty.

Attest: DAVID FILES, *Clerk C. C. S. D. A.*

THE UNITED STATES OF AMERICA,
Circuit Court of the United States Southern District of Alabama.

The President of the United States to the Marshal of any District in the State of Alabama:

You are commanded to summon William E. Phillips & Co., (a partnership composed of William E. Phillips and Henry Bell,) Rodah Horton, and Nathaniel Terry, to be and appear before the Supreme court of the United States, to be holden at Washington city, at the Capitol, on the second Monday of January next, then and there to answer to a certain cause removed to the said Supreme Court, by writ of error to the circuit court of the United States for the southern district of Alabama, in which James S. Brander and Hugh F. McKenna are plaintiffs, and the said Wm. E. Phillips &

Co., Rodah Horton, and Nathaniel F. Terry are defendants. The said writ of error being sued out by the said plaintiffs to reverse the judgment of the said circuit court. Hereof fail not.

Witness John Catron, Associate Justice of the Supreme Court of the United States, this 3d day of August, A. D. 1840.

J. CATRON.

Executed on A. F. Hopkins, James W. McClung, attorneys of record for the defendants, and Rodah Horton, 31st August, 1840. Executed on Nathaniel Terry, 5th October, 1840.

BENJAMIN PATTERSON,
Marshal of the Northern District of Alabama.

William E. Phillips and Henry Bell not found in my district. October 13, 1840.

BENJAMIN PATTERSON,
Marshal of the Northern District of Alabama.

Notice of the within received. Mobile, 21st October, 1840.

STEWART & EASTON,
Attorneys for the Appellees.

Know all men by these presents, that we, James S. Brander and Hugh L. McKenna, are held and firmly bound unto Wm. E. Phillips and Henry Bell, partners, under the firm of Wm. E. Phillips & Co., Rodah Horton, and Nathaniel Terry, in the penal sum of five hundred dollars, for the payment of which well and truly to be made, we do hereby bind ourselves and each of our heirs, executors, and administrators, firmly by these presents. Signed and sealed this 3d day of August, A. D. 1840.

The condition of this obligation is such, that whereas, the above bounden James S. Brander and Hugh L. McKenna, have applied for and obtained a writ of error, from the Supreme Court of the United States, to reverse a judgment of the circuit court of the United States for the southern district of Alabama, in a certain case wherein the said Brander & McKenna are plaintiffs, and the said Wm. E. Phillips, Henry Bell, Rodah Horton, and Nathaniel Terry, defendants. Now, if the said Brander & McKenna shall prosecute their writ of error with effect, or in case they fail therein, shall perform the judgment which shall be rendered by the said Supreme Court, then this obligation to be void, otherwise to be in full force and virtue.

BRANDER & McKENNA, [L. S.]
H. F. McKENNA, [L. S.]
JOHN WILLIAMS, [L. S.]

Approved 3d August, 1840.

Acknowledged before me, as to Jno. Williams.

J. CATRON.

A true copy of the original bond filed.

Attest: DAVID FILES, *Clerk C. C. S. D. A.*

Citation.

Pleas had before the Honorable Circuit Court of the United States for the Ninth Judicial Circuit and Southern District of Alabama, at a term thereof, begun and held in and for said District, at Mobile, on the second Monday of March, in the year of our Lord one thousand eght hundred and forty, before their Honors John McKinley, presiding Judge, and William Crawford, Judge of said Court.

Be it remembered, that heretofore, to wit, at the November term of said circuit court, James S. Brander and Hugh F. McKenna filed in the office of the clerk of said circuit court, a transcript of a record from the district court of the United States, for the northern district of Alabama, in the words and figures following, to wit:

BRANDER & MCKENNA
vs.
WM. E. PHILLIPS & CO. et al. } 2489.

The President of the United States of America to the Marshal of the Northern District of Alabama, greeting:

Whereas, in a cause lately pending in the district court of the United States of America, for the northern district of Alabama, between James S. Brander, who is a citizen of the State of Virginia, and Hugh F. McKenna, who is a citizen of the State of Louisiana, merchants and partners, trading under the name, firm, and style of Brander & McKenna, plaintiffs, and William E. Phillips and Henry Bell, late merchants and partners, trading under the name, firm, and style of Wm. E. Phillips & Co., and Rhoda Horton and Nathaniel Terry, defendants, judgments therein against the said plaintiffs was rendered at the time of the term of the said district court, begun and held for said district, at the court-house in the town of Huntsville, on the third Monday in May, in the year eighteen hundred and thirty-nine, for the sum of one hundred and eighty-five dollars and thirty-nine cents, costs, &c. And whereas, upon the judgment aforesaid, the said plaintiffs, on the fifteenth day of August, eighteen hundred and thirty-nine, obtained their writ of error returnable to the next term of the circuit court of the United States, at Mobile, in the State of Alabama, to be held at the city of Mobile, in the State last aforesaid, on the fourth Monday of November next. We, therefore, command you to cite the said defendants, to be and appear before the said circuit court of the United States, to be held at the city of Mobile as aforesaid, to hear and defend the errors, if any, which the said plaintiffs may assign; and at least ten days before the said fourth Monday in November next, have this writ and the return thereon, at the office of the clerk of

the district court aforesaid, so that the service thereof may be certified to the said district court.

Witness the Honorable William Crawford, judge of said district court, this fifth day of September, A. D. eighteen hundred and thirty-nine, and in the sixty-fourth year of the Independence of the United States of America.

[L. S.]

Issued the fifth day of September, 1839.

Attest: B. T. MOORE,
Clerk of said District Court.

Writ of Error.

THE UNITED STATES OF AMERICA,
Northern District of Alabama.

To Benjamin T. Moore, Clerk of the District Court of the United States for the Northern District of Alabama, greeting:

Because, in the record and proceedings, and also in the giving of judgment in a suit which was in said district court for said district, before the judge thereof, between James S. Brander, who is a citizen of the State of Virginia, and Hugh F. McKenna, who is a citizen of the State of Louisiana, merchants and partners, trading under the name, firm, and style of Brander & McKenna, plaintiffs, and William E. Phillips and Henry Bell, late merchants and partners, under the name, firm, and style of Wm. E. Phillips & Co., and Rhoda Horton and Nathaniel Terry, who are citizens of the State of Alabama, residing in the northern district of Alabama as aforesaid, defendants, of a plea of trespass on the case, manifest error hath intervened, to the great damage of the said plaintiffs, as we are informed; and we being willing that error, if any there be, should in due manner be corrected, and full and speedy justice be done to the parties aforesaid, in this behalf, do command you, that if judgment be thereupon given, then you send to our judges of the circuit court of the United States of America, for the ninth judicial circuit, distinctly, under your seal, the record and proceedings aforesaid, with all things concerning the same, and this writ, so that we may have them there at a term of the circuit court aforesaid, to be held at the court-house in the town of Mobile, in the southern district of Alabama, on the fourth Monday in November next, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon for correcting that error, what of right and according to the law and custom of the United States of America, ought to be done.

Witness William Crawford, judge of said district court, this fifth day of September, A. D. eighteen hundred and thirty-nine, and

of the Independence of the United States of America, the sixty-fourth year.

Issued the fifth day of September, 1839.
Attest: B. T. MOORE,
Clerk of said District Court.

Transcript.

THE UNITED STATES OF AMERICA.

Pleas had at a term of the district court of the United States for the northern district of Alabama, begun and held at the court-house in the town of Huntsville in said district, on the third Monday (being the twentieth day) of May, in the year of our Lord one thousand eight hundred and thirty-nine, and of the sovereignty and Independence of the United States of America aforesaid, the sixty-third.

Present—The Hon. William Crawford, Judge of said District Court.

BRANDER & MCKENNA
vs.
WM. E. PHILLIPS & CO., RHODAH HORTON and NATHANIEL TERRY. } 377.

Be it remembered, that heretofore, to wit, at a term of the district court of the United States for the northern district of Alabama, begun and held at the court-house in the town of Huntsville, on the second Monday of October, in the year of our Lord one thousand eight hundred and thirty-six, was returned a writ of *capias ad respondendum* in the name of Jas. S. Brander and Hugh F. McKenna, merchants and partners, trading under the name, firm and style of Brander & McKenna, plaintiffs, against William E. Phillips and Henry Bell, late merchants and partners, under the name, firm and style of Wm. E. Phillips & Co., and Rodah Horton and Nathaniel Terry, defendants, in the words and figures following, to wit:

The President of the United States of America to the Marshal of the Northern District of Alabama, greeting:

We command you to take the bodies of William E. Phillips and Henry Bell, late partners, trading under the firm and style of Wm. E. Phillips & Co., Rodah Horton and Nathaniel Terry, who are citizens of the State of Alabama, residing in said district, if to be found therein, and them safely keep, so that you have their bodies before the honorable the judge of the district court of the United States for said district, to be held at Huntsville, on the second Monday in October next, to answer James S. Brander, who is a citizen of the State of Virginia, and Hugh F. McKenna, who is a

citizen of the State of Louisiana, merchants, partners, trading under the firm and style of Brander & McKenna, in a plea of trespass on the case to their damage four thousand dollars; fail not herein, and have then there this writ.

Witness the honorable William Crawford, judge of said [L. S.] court, this 22d day of September, in the year of our Lord 1836, and in the 61st year of American Independence.

Attest: B. T. MOORE, *Clerk.*

Issued 22d day of September, 1836.

Endorsement on Writ.

(Endorsed.) This action of trespass on the case is brought to recover damages of the defendants, and is founded on the following liability:

The defendants, by the name of Wm. E. Phillips & Co., Rodah Horton and Nathaniel Terry, drew their certain bill of exchange, bearing date, Huntsville, September 1st, 1834, in favor of Richard Phillips, or order, for three thousand dollars, for value received, and payable nine months after date, on the plaintiffs, and directed it to them by their partnership name of Brander & McKenna, at New Orleans, which is in the State of Louisiana. The plaintiffs accepted said bill in their partnership name of Brander & McKenna, for the sole use of the defendants, and at their instance and request, and paid said bill at maturity, the defendants having failed to place funds in the hands of the plaintiffs to meet said bill. Also to recover of the defendants the sum of four thousand dollars, for money there and then lent and advanced, paid, laid out, and expended by the plaintiffs for the defendants, at their request, and for money had and received by the defendants for the plaintiffs' use. All of which said several sums of money are due and unpaid.

No bail required.

WALLACE & LEWIS, *P. Q.*

Received 23d September, 1836. Executed, and copies left, the 26th September, 1836.

B. PATTERSON,
Marshal of the Northern District of Alabama.
By his Deputy, THOMAS PATTERSON.

Declaration.

And at the said term of said district court came the plaintiffs, by their attorneys, and filed their declaration in said cause in the words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES,
For the District of North Alabama, October Term, 1836.

James S. Brander and Hugh F. McKenna, late merchants, partners, trading under the firm of Brander & McKenna, the said James

S. Brander being a citizen of the State of Virginia, and the said Hugh F. McKenna being a citizen of the State of Louisiana, complain of William E. Phillips and Henry Bell, late merchants, partners, trading under the firm of Wm. E. Phillips & Co., and Rodah Horton, and Nathaniel Terry, who are all citizens of the State of Alabama, residing in the aforesaid northern district, in custody, &c., of a plea of trespass on the case. For that whereas, heretofore, viz: on the 1st day of September, 1834, at the district aforesaid, in consideration that the said plaintiffs, for the accommodation, and at the special instance and request of the said defendants, would accept a certain bill of exchange, in writing, bearing date the day and year aforesaid, and made and drawn by the said defendants, by the names of Wm. E. Phillips & Co., and Rodah Horton, and Nathaniel Terry, at Huntsville, in the State of Alabama, on the said plaintiffs, in their partnership name as aforesaid, and directed to them at New Orleans; and whereby the said defendants require the said plaintiffs, nine months after the date of said bill of exchange, to pay to the order of Richard Phillips the sum of three thousand dollars, as for value received, and would deliver the same, so accepted, to the said Richard Phillips, in order that the same might be negotiated for the use and benefit of said defendants, they, the said defendants, then and there undertook, and faithfully promised the said plaintiffs, to provide money for the payment of said bill of exchange when the same should become due and payable, and to indemnify and save harmless the said plaintiffs from any loss or damage for or by reason of their acceptance of the said bill of exchange, as aforesaid. And the said plaintiffs aver that they, confiding in the said promises and undertakings of the said defendants, did afterwards, viz: on the day of , at the city of New Orleans, viz: at the district aforesaid, accept the said bill of exchange, in their partnership name as aforesaid, and deliver the same, so accepted, to the said Richard Phillips, for the purpose aforesaid; and although the said bill of exchange, so accepted as aforesaid, was afterwards, viz: on the day of aforesaid, negotiated by the said Richard Phillips to one A. C. Beard, and by A. C. Beard to one W. Keys, cashier, and by said W. Keys to S. B. Perrault, Esq., cashier, for the use and benefit of the said defendants; and the same hath long since become due and payable, viz: at the city of New Orleans as aforesaid; yet the said defendants, not regarding their said promise and undertaking, but contriving and fraudulently intending craftily and subtly to deceive, &c., in this behalf did not nor would furnish money for the payment of said bill of exchange when the same became due and payable, nor indemnify or save harmless the said plaintiffs from any loss or damage for or by reason of their acceptance of the said bill of exchange as aforesaid, but wholly neglected and refused so to do. By means and in consequence whereof the said plaintiffs as such acceptors of said bill as aforesaid, viz: on the day of , at the city of New Orleans as aforesaid,

at the maturity of said bill of exchange, were called upon and forced and obliged to pay, and did then and there pay to J. B. Perrault, the holder thereof, the said sum of money in said bill of exchange specified; and by means of said premises the said plaintiffs are damnified to the amount thereof as aforesaid. The common counts for money lent and advanced, paid, laid out, and expended, money had and received, are considered as written by consent of counsel.

And whereas also, afterwards, to wit, on the day of , at the district aforesaid, the said defendants were indebted to the said plaintiffs in the further sum of one hundred and fifty dollars, for the work and labor, care and diligence and attention, of the said Brander and McKenna, before that time done and performed and bestowed, as commission merchants, in the city of New Orleans, in the State of Louisiana, in accepting, as accommodation acceptors, the joint bill of exchange of said defendants, dated and drawn as aforesaid, and for the amount aforesaid, and in advancing for said defendants the amount of said bill, at the maturity thereof, according to the tenor and effect of the same, and for certain commissions and reward due, and of right payable, from the said defendants to the said plaintiffs in respect thereof; and being so indebted, they the said defendants, in consideration thereof, on the day and year last aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said last mentioned sum of money, when they the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, viz: on the day of last aforesaid, at the district aforesaid, accounted with the said plaintiffs of and concerning divers other sums of money from the said defendants to the said plaintiffs before that time due and owing, and then in arrear and unpaid, and upon such accounting, the said defendants were then and there found to be in arrear and indebted to said plaintiffs in the further sum of three thousand four hundred and forty-one dollars and ninety-one cents; and being so found in arrear and indebted, they the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said last mentioned sum of money, when they the said defendants should be thereunto afterwards requested. Nevertheless the said defendants, not regarding their said several promises and undertakings, but contriving, &c., have not as yet paid said several sums of money, or any, or either of them, or any part thereof to the said plaintiffs, though often requested so to do, but to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the plaintiffs damage four thousand dollars, therefore they bring their suit, &c.

WALLACE & LEWIS, *P. Q.*

Defendants' Pleas.

Pleas, non assumpsit and payment in short, by consent.
McCLUNG, ROBINSON, & HOPKINS, & PARSONS,
Attorneys for Defendants.

And afterwards, to wit, on the twenty-second day of May, being a day of a term of the district court for the district aforesaid, begun and held at the court house in the town of Huntsville, in said district, on the third Monday in said month, (May,) in the year of our Lord one thousand eight hundred and thirty-eight, "came the parties, by their attorneys, and on motion, it is ordered that this cause be continued as on affidavit of defendants."

And afterwards, to wit, on the twenty-seventh day of November, being a day of a term of the district court aforesaid, begun and held in the court house in the town of Huntsville, in said district, on the fourth Monday in said month, (November,) in the year of our Lord one thousand eight hundred and thirty-eight, "came the parties, by their attorneys, and on motion, it is ordered that this cause be continued as on affidavit of said plaintiffs."

And afterwards, to wit, on the twenty-first day of May, being a day of a term of the district court of the United States, for the northern district of Alabama, as aforesaid, begun and held at the court house in the town of Huntsville, in said district, on the third Monday in said month, (May,) in the year of our Lord one thousand eight hundred and thirty-nine, "came the parties, by their attorneys, and on motion of said plaintiffs, it is ordered that the deposition on file in said cause be opened."

And now, afterwards, to wit, on the twenty-second day of May, in the year of our Lord one thousand eight hundred and thirty-nine, being a further day of the term last aforesaid, "came the parties, by their attorneys, and comes also a jury of good and lawful men, to wit: John R. B. Eldridge, Edward Rawlins, Stephen S. Ewing, William McDowell, John Vining, John Kinkle, Israel Skillum, David Moore, Phares T. Pony, Elisha H. Rice, John Read, and Thomas Fearn; who, being duly elected, tried, and sworn the truth to speak upon the issues joined, on their oath do say they find said issues for the defendants. It is therefore considered by the court that the said defendants go hence, &c., and recover against said plaintiffs the costs herein expended, &c.

The Bill of Exceptions.

And afterwards, to wit, on the twenty-fifth day of May, eighteen hundred and thirty-nine, being a further day of the term last aforesaid, "pending the trial of this cause, the plaintiffs, by their attor-

neys, tendered their bill of exceptions to opinions of the court, which is signed and sealed, and ordered to be made part of the record in this cause.

The Bill of Exceptions.

Be it remembered, that on the trial of this cause, the plaintiffs introduced the following proofs, viz:

1st. Proof of the handwriting of the drawers of the bill of exchange of Wm. E. Phillips & Co., and Horton and Terry.

2d. The bill of exchange, which is in the words and figures following, to wit:

Bill of Exchange.

"HUNTSVILLE, *September 1st*, 1834.

Exchange for $3,000.

Nine months after date of this our first of exchange, (second of the same tenor and date unpaid) pay to the order of Richard Phillips, three thousand dollars, value received, and charge the same to account of WILLIAM PHILLIPS & CO.
RODAN HORTON.
NATH'L TERRY."

"To BRANDER & MCKENNA, New Orleans."

Endorsed: "Richard Phillips, A. C. Beard. Pay J. B. Perrault, Esq., cashier, or order. W. KEYS, *Cashier*."

3d. The deposition of the witness, William Lutgens, which is in the words and figures following, viz:

UNITED STATES OF AMERICA, *Eastern District of Louisiana, City of New Orleans, ss.*

Be it remembered, that on this twenty-second day of March, in the year of our Lord one thousand eight hundred and thirty-nine, before me, Thomas Wharton Collins, a commissioner duly appointed on the 8th July, 1836, by the district court of the United States, in and for the eastern district of Louisiana, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United ," passed September 24th, 1789, personally appeared William Lutgens, a person of sound mind and lawful age, a witness for the plaintiffs, in civil suit now depending in the district court of the United States in and for the northern district of Alabama, wherein Brander & McKenna are plaintiffs, and Wm. E. Phillips

& Co., and Rodah Horton and Nathaniel Terry are defendants; and the said William Lutgens, being by me first duly examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say: That on the 4th day of June, 1835, and before and after that time, he was a clerk in the commission house of Brander & McKenna, in New Orleans; and he knows that on the day above named there fell due and became payable a certain bill of exchange, drawn by Wm. E. Phillips & Co., Rodah Horton, and Nathaniel Terry, which is hereto annexed, dated September 1st, 1834, and payable, nine months after date, to the order of Richard Phillips, for the sum of three thousand dollars, and addressed to Messrs. Brander & McKenna, New Orleans, in their partnership name of Brander & McKenna, which was accepted by the said Brander & McKenna, in their partnership name, and which by assignments was made payable to J. B. Perrault, cashier; and that on the day the same fell due it was paid to the said Perrault, by the said Brander & McKenna, for and on account of the drawers. Deponent also further saith, that the open account hereto annexed is correct and true, amounting on the 31st July, 1836, to three thousand four hundred and forty-one dollars and ninety-one cents; and that the charge of two and a half per cent. for accepting, and two and a half per cent. for advancing, in said account, is usual and customary among commission merchants in New Orleans, for accepting and advancing bills of exchange. Deponent further saith, that neither the said Wm. E. Phillips & Co., Rodah Horton, and Nathaniel Terry, individually or jointly, has ever refunded the money so advanced, or paid the said commissions and interest charged in said account, either by cash or shipments of produce, before or after maturity and payment of said bill, or in any other manner, so far as has come to the knowledge of this deponent. And this deponent further states, that if any produce had been shipped to said Brander & McKenna, by the said Wm. E. Phillips & Co., Rodah Horton, and Nathaniel Terry, or either of them, to meet said bill at maturity, or to refund to the said Brander & McKenna for advancing, he believes he would have been aware of such payment and shipment, as he kept the books of said Brander & McKenna, and had kept them from and before the maturity of said bill, and is well acquainted with the business of said Brander & McKenna as commission merchants. And he further saith, that said bill was accepted by the said Brander & McKenna for the accommodation and use of the said William E. Phillips & Co., Rodah Horton, and N. Terry, as deponent really believes; and that said sum of three thousand four hundred and forty one dollars and ninety-one cents, as in account, still remains due and owing, to the best of deponent's knowledge, information, and belief.

WM. LUTGENS.

UNITED STATES OF AMERICA, *Eastern District of Louisiana, City of New Orleans, ss.*

I, Thomas Wharton Collins, a commissioner, duly appointed, on the 8th July, 1836, by the district court of the United States for the eastern district of Louisiana, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled an act *to* the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789; do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness lives in New Orleans, State of Louisiana, more than one hundred miles from Huntsville, State of Alabama, the place of trial of the cause for and in which said deposition is taken and is necessary. I further certify, that no notice was made out and served on the defendants, or adverse parties, their agent or attorney, to be present at the taking of this deposition, and to put interrogatories, if he or they may think fit; and that no notification of the time and place of taking the said deposition was made out and served on said defendants, or adverse parties, nor any attorney or agent of said adverse parties; because neither the said adverse parties, nor any attorney or agent of said adverse parties, was, at the time of taking said deposition, within (100) one hundred miles of the said city of New Orleans, the place of taking said deposition. I further certify, that on this twenty-second day of March, A. D. 1839, I was attended by the witness, who is of sound mind and lawful age, and the witness was by me carefully examined and cautioned, and sworn to testify the whole truth; and the deposition was by me reduced to writing, in the presence of the witness; and after carefully reading the same to the witness, he subscribed the same in my presence; I have retained the said deposition in my possession, for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken. I further certify, that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause, named in the caption.

In testimony whereof, I have hereunto set my hand and
[L. S.] seal. T. W. COLLINS,
U. S. Commissioner, District Court, U. S., for the Eastern District of Louisiana.

The Bill of Exchange referred to in the foregoing Deposition.

HUNTSVILLE, *September 1st*, 1834.

Exchange for $3,000.

Nine months after date of this our first of exchange, (second of the same tenor and date unpaid,) pay to the order of Richard Phil-

lips, three thousand dollars, value received, and charge the same to account of

WM. E. PHILLIPS & CO.
RODAH HORTON.
NATH'L TERRY.

To Messrs. Brander & McKenna, New Orleans.

Endorsed: Richard Phillips, A. C. Beard. Pay J. B. Perrault, Esq., cashier, or order. W. KEYS, *Cashier.*

The Account referred to in said Deposition.

" Wm. E. Phillips and Co., R. Horton and N. Terry, account with Brander and McKenna:

1835. Jan. 31.	To your drafts favor Richard Phillips, dated 1 Sept. 1834, at 9 mo's. 1835, 4 June - - -	$3,000 00
	" Commissions accepting 2 1–2 per cent.; advancing 2 1–2 per cent.	150 00
	" Interest to 31st July, 1836 -	291 91
	E. E. Omit 31 July 1836.	$3,441 91

Whereupon the defendants, to prove the issues on their part under the plea of payment, introduced and proved the following accounts of sales and letters from the house of Brander and McKenna, to the house of Wm. E. Phillips, & Co., (to wit:)

A.

Account sales of 30 bales cotton received from Parker's flat, account Messrs. W. E. Phillips and Co. 1835, Feb. 14, sold A. Serfear.

W. E. P.	29	416				
	28	412				
	19	418				
	20	426				
	27	404				
	30	416				
	4	410				
	23	412				
	22	432	—3746 at 16 cts.		$599	36
	26	411				
	17	428				
	11	420				
	24	398				
	—	398				
	10	440				
		428	—2923 at 15 cts.		438	45
	7	456	15	424		
	9	433	8	442		
	5	432	1	429		

18	458	13	442			
21	443					
6	448					
2	426					
14	447					
12	448					
16	441					
	4442		1737			
	1737	6179 lbs. at 14 1-2		895	95	1,933 76
Freight per bill lading and charges				79	80	
Insurance at $60 per bale, at 1 1–2 per cent.				27	00	
" against fire, at 12 1–2 cts.				3	75	
Drayage, storage, and labor at 46 1–2 cts.				13	88	
Commission at 2 1–2 per cent.				48	34	172 77
			Nett proceeds,			$1,760 99

E. E. New Orleans, 23d March, 1835.

BRANDER & McKENNA.

B.

Account sales 10 bales cotton, per Parker's flat, account Messrs. W. E. Phillips & Co. 1835, March 24, sold Grimshaw & Hoane.

W. E. Phillips.	36	458				
	32	454				
	37	462				
	39	419				
	35	478				
	40	423				
	31	463				
	38	437				
	33	410				
	34	497	4501 at 15 1–4			$686 40
Freight per bill lading, and charges - -				26	55	
Insurance at $60 a bale, at 1 1–2 per cent. -				9	00	
Fire insurance at 12 1–2 a p. - - -				1	25	
Drayage, storage, labor, &c., at 46 1–4 cts. -				4	62	
Commission, at 2 1–2 per cent. - - -				17	16	58 58
			Nett proceeds,			$627 82

E. E. New Orleans, 28th March, 1835.

BRANDER & McKENNA.

[Mail.] NEW ORLEANS, *Nov. 29th*, 1835.

Messrs. WM. E. PHILLIPS, & Co., *Huntsville*,

GENTLEMEN: We handed you in ours of 26th inst., account sales of 108 bales cotton, and annex hereto account sales of ten bales more, W. E. Phillips; nett proceeds six hundred and twenty-seven dollars and eighty-two cents at your credit. We have no variation in cotton to quote; the enquiry from purchasers remained active to the end of the week, and the market closed with firmness. Very respectfully, your most obedient,

BRANDER & McKENNA.
Per GEORGE POLLARD.

Yours of 14th with bill of lading for 48 bales cotton is received, its contents noticed.

C.

Account sales of 78 bales cotton received per Wayland flat, account Messrs. W. E. Phillips, and Co. 1835, March 18, sold Benj. Booth, & Co.

R. D.	16	382	437	W. McA.	8	449	13	432
	2	418	391		20	391	24	412
	18	381	426		16	426	14	437
		405	391		22	400	11	435
		433	425		12	441	59	429
		424			6	460	2	420
		410			21	419	10	446
		387			19	400	25	466
		417			23	457	5	442
		401			18	417	7	417
		4058	2070			4260		4326
W. McA.	3	432		H.H.	10	434		460
	9	435			3	468		471
	1	434			8	464		423
	17	426			4	465		
	15	420			6	450		
					1	463		
		2147			11	473		
					12	456		
H. Bell.	6	418	W.E.P. 3	144	5	381		
	10	432	14	370	9	465		
	7	410	6	423				
	4	494	5	411		4519		1354
	8	417	7	463				
	9	404		420	13	367		
	5	422	4	460	9	355		
		472	2	455	11	361		
					15	380		
		3469	12	406	16	411		

	7 389	18 430	
		8 402	
	4231		
		2706	

Recapitulation.

4058			
2070			
4260			
4326			
2147			
4519			
1354			
4231			
2706			
3469	33,140 lbs. at 14 3–4 cts.		$4,888 15
	Insurance at $60 p. at 1 1–2 per cent.	$70 20	
	Fire insurance at 12 1–2 p. - -	9 75	
	Drayage, storage, and labor, at 46 1–4,	38 07	
	Commission, at 2 1–2 per cent. - -	122 20	238 22
	N. proceeds,		$4,649 93

E. E. New Orleans, 23d March, 1835.

BRANDEN & McKENNA.

[Mail.] NEW ORLEANS, *March 26th*, 1835.

Messrs. WM. E. PHILLIPS, & Co., *Huntsville, Ala.*

GENT.: Inclosed we hand account sales of W. E. P., 30; R. D. 15; W. McA., 25; H. Bell, 8; H. H. 13; and W. E. P., 17; together one hundred and eight bales cotton; nett proceeds to your credit in account current, six thousand four hundred and ten dollars; and ninety-two cents. The Liverpool accounts, mentioned in ours of 22d inst., have given to the article more life than prevailed previous to their receipt.

The demand has been thro' this week brisk, and sales more readily effected at last quotations; holders are endeavouring by asking, to obtain an advance, but none has yet been established by sales. The market however is in a good sound condition, and the endency in sales is rather upwards than otherwise.

With respect, we are your obedient sevants,

BRANDER & McKENNA.

Per GEORGE POLLARD.

(D.)

W. E. Phillips, dft. due April 16, 1835, $2,000, August 14, $1,000	- - - -	$3,000 00
W. E. Phillips & Co. dft. due	May 3, - -	2,444 57
	June 18, - -	1,540 94
	July 5, - -	2,000 00
	do. 6, - -	3,000 00
	do. 24, - -	3,000 00
Ditto and S Phillips,	Feb. 19, - -	350 00
	April 19, - -	1,000 00
ditto V. G. Pruitt & L. B. Tallifero	due April 30, -	2,000 00
ditto H. F. Jones & D. H. Tillinghast	May 6, -	3,000 00
ditto do John Phillips	July 28, -	2,444 57
ditto R. Horton & N. Terry	June 4, -	3,000 00
ditto & J. Robinson due June 27, $1,050 and 650	-	1,700 00
ditto & J. Phillips - - - -	-	3,000 00

Amount of sales rendered of 85 bales cotton $5,045 40
On hand unsold 124
Bills lading rec'd for 138 not arrived

[Mail.] NEW ORLEANS, *May 7th*, 1835.

Messrs. WM. E. PHILLIPS & Co, *Huntsville, Ala.*

GENTLEMEN: Referring to ours of 3d instant, we have no variation of moment to advise in this cotton market; during this week the operations have been on a limited scale, buyers being reluctant to pay the prices demanded by holders, but the latter are firm at their asking rates, and will not reduce to effect sales. Attached you have a memo. of our acceptances for you, of cottton received and sold for you, on hand, and of the number of bales for which we hold bills of lading, but which has not reached here. We beg leave to call your attention to this statement.

And remain, very respt'y, your most obedient
BRANDER & McKENNA.
Per GEORGE POLLARD.

Sales of 189 bales cotton by Brander & McKenna, pr. order, and for account and risk of Messrs. W. E. Phillips & Co.

1835 June 20, To P. J. Tricon.

A. G. B.	20	390	3	561	36	381			72	440
	6	510	41	386	51	395			75	425
	8	683	28	370	59	389	H.	H.	13	420
	40	403	4	499	77	544	J.	J.	5	342
	45	462		396	67	441	W.	E. P.	67	494
	10	545	34	389	13	510			62	455
	1	585	95	387	19	410			77	404
	11	545	56	430	68	425			58	500

	17	610		391	34	405		77	440
	15	543	71	421	22	385		83	435
		5176		4230		4285			4355
	68	412							
	71	411							
	80	410					61	512	
	86	460					81	455	
	84	441					72	385	
	83	501					85	455	
	78	446					82	406	
	73	400	W. E. Phillips.				46	425	
	16	295					48	425	
	69	386	R. D.				8	378	
							2	416	
		4162					4	420	
								4277	
	1	385							
	2	394							
		779				27,264 lbs. at 18 cts.			$4,907 52
D.D.	62	404	W. Mc A.	27	390		53	403	
	57	411	W.	11	440		52	430	
	58	395	W. C. W.	34	415		41	459	
H.H.	12	394	W. E. P.	3	405				
	3	483		4	410				
H. B.	32	344		1	437				
	14	440		51	409				
	24	335		54	424				
	9	454		55	423				
	8	440		49	396				
		4100			4149			1292	
					9,541 lbs. at 17 1-4 cts.				$1,645 82
A. G. B.	21	394	38	590	65	439	48	376	
	63	379	39	396	53	391	70	450	
	58	410	7	570	50	440	40	396	
	30	435	52	515	12	470	33	420	
	69	434	37	390	9	546	27	431	
	62	435	63	407	31	416	32	426	
	37	386	14	522	23	455	54	431	
	40	379	5	599	35	374	76	415	
	25	382	16	506	44	440	14	385	
	60	381	2	570	74	445	78	420	
		4001		4863		4396		4150	

	42	411	H. B. M.	1	370	2	380	411
	49	418		3	380	4	380	46 411
	61	397		2	460	D. D. 13	415	64 403
	47	398		11	451	17	400	430
	66	426			410	3	396	3 414
H. H.		460		16	432	9	470	398
	15	470		3	328	11	388	18 395
	16	456		2	340	12	370	14 385
B. B. B.	2	483		11	340	2	443	16 387
	1	480			391		440	21 388
		4399			3902		4082	4022

	15	380			72	444	54	421
H. B.	12	524			56	409		
	18	330			59	460		
	12	380			65	467		
	13	485			75	395		
	22	360	W. E. Phillips.		42	422		
	6	480			45	415		
	1	504			46	415		
W. E. P.	66	549			43	450		
	76	420			47	429		
		4412				4306		421

42,954 lbs. a. 16 1-2 cts. $7,087 41

H. Bell.		375	
M. A.	3	373	
		367	

1,115 lbs a. 15 cts. 167 25

$13,808 00

Charges.

Freight on 161 bales, 72,598 lbs. a. 1-2 ct. and charges on 15 bales $750 - - -	369	49
Do 28 do payable in Huntsville		
Insurance 1 1-2 pr. ct. on $60 per bale -	170	10
Fire insurance 12 1-2 cts. pr. bale - -	23	62
Drayage, labor, storage, and weighing, 46 1-4 ct.	87	41
Commission on sale 2 1-2 pr. ct. - -	345	20
		995 82

$12,812 18

E. E. New Orleans, July 1st, 1835.

BRANDER & McKENNA.
Per A. B. ADAMS.

[Mail.] NEW ORLEANS, *July 7th*, 1835.

Messrs. W. E. PHILLIPS, & Co., *Huntsville.*

DEAR SIRS: By this mail we have only time to hand you annexed account sales of 189 bales of cotton, nett proceeds to your credit, twelve thousand eight hundred and twelve dollars, eighteen cents, which we hope will fully meet your expectations; some bales remain, which could not be found; in a few days shall forward account, and if possible sales of the entire.

Your obedient servants,
BRANDER & McKENNA.

Sales of 13 bales cotton by Brander & McKenna, per order, and for account and risk of Messrs. W. E. Phillips & Co.

1835, August 5. To E. J. Forstall & Co.

W. C. W.	17	322		
W. Mc. A.	34	320		
H. Bell.	1	331		
B. B. B.	13	386	1,359 lbs. at 17 1-2 cts,	$237 82
W. Mc. A.	26		312 lbs. at 16 5-8 cts.	51 87

Cash at auction.

W. Mc. A.	6	bales	damaged cotton	at $26	per bale	$156
W.	2	do.	do.	do.	59	118
						274
Less, auctioneer's commission					6 85	267 15
						556 84

Charges.

Freight on 11 bales per Wayland, 4,445, a 1-2 c.	$22 23	
Drayage, labor, storage, and weighing, 46 1-4 c.	6 01	
Insurance 1 1-2 on $60 per bale. - -	11 70	
Fire insurance 12 1-2 c. per bale. - -	1 63	
Commissions on sale 2 1-2 c. - - -	13 92	
		55 49
		$501 35

E. E. New Orleans, 10th August, 1835.

BRANDER & McKENNA,
per A. B. ADAMS.

(G.)

Sales of six bales cotton by Brander & McKenna, per order, and for account and risk of Messrs. W. E. Phillips & Co.

1825, August 5. To E. J. Forstall & Co.

D. D.	61	302
	60	260

44	365		
51	310		
48	406		
68	286		
	1,929 lbs. a 17 1-2 c.	$337	57

Charges.

Freight papable by shippers.			
Drayage, labor, storage, and weighing, 46 1-4 c.	2	78	
Insurance 1 1-2 on $60 perbale. - -	5	40	
Fire insurance 12 1-2 per bale. - - -		75	
Commissions on sale 2 1-2 c. - - -	8	40	17 37
			320 20
1-2 pds. W. E. P.	160	10	
1-2 pds. W. E. P. & Co.	160	10	
	320	20	

E. E. New Orleans, 10th August, 1835.

BRANDER & McKENNA,
per A. B. ADAMS.

[Mail.] NEW ORLEANS, 13*th August*, 1835.

Messrs. WM. E. PHILLIPS & Co., *Huntsville.*

DEAR SIRS: We wrote you on 11th July, enclosing statement of your account and the accounts of others with whom you are joint drawers of drafts on us; since we have not heard from you. We now hand account sales of D. D. six bales cotton, half proceeds $160 10 to your credit, the residue to credit Mr. Wm. E. Phillips. cr. $501 35 } Also account sales of thirteen bales, including eight $661 45 } bales damaged, nett proceeds to you say in all six hundred and sixty-one dollars forty-five cents, the loss on damaged not yet adjusted with the office. The amount received will appear at your credit when collected. We must again call your attention to our advances on your account, and request you will place us in funds to cover the amount.

We are your obedient servants,
BRANDER & McKENNA.

N. B. We have drawn a small draft on you in favor of Wayland to balance his account, which please pay and place to our debit.

(H.)

NASHVILLE, *August 15th*, 1834.

To the Cashier of the Branch Bank of the
State of Alabama, at Decatur.

DEAR SIR: Any bills drawn by Messrs. Wm. E. Phillips & Co. (with any two of the following gentlemen as joint drawers with them, viz: Rodah Horton, Nathaniel Terry, V. G. Pruit, L. B. Tallifero, Hardman F. Jones, Nathaniel Terry, and D. H. Tillinghast, all of Alabama,) on Brander & McKenna, New Orleans, to the amount of eight thousand dollars, I hereby authorize, provided the bills are drawn at such a time as to mature in the following order, viz: two thousand dollars between the 20th April and 31st July next, three thousand dollars between the 1st of May and 31st July next, and three thousand dollars between 1st June and 31st July next.

With great respect, your obedient servant,
JNO. WILLIAMS.

As rendered by their clerks and agents as well as by themselves.

The defendants also introduced in the cause John Phillips, who deposed that he was present at a conversation held between Henry Bell, one of the defendants, and John Williams, the agent of Brander & McKenna, in August, 1834, (when letter marked H was written in witness' presence,) in which Bell told Williams that he wished to draw bills on the house of Brander & McKenna, and could furnish, as joint drawers in the bills with himself and William E. Phillips, (who composed the firm of William E. Phillips & Co.) the names of these defendants, Horton and Terry, and other individuals; that these persons were his friends, and willing to become his security, but not the security of William E. Phillips; and that all the cotton shipped by the house of William E. Phillips & Co., should be applied first to the payment of the joint bills. The bills herein contained and made part of this bill of exceptions was drawn after the conversation which witness deposed to. The plaintiffs then introduced as a witness in the cause John Williams, agent of the house of Brander & McKenna as aforesaid, who deposed that he had no recollection of that part of the conversation with Bell which related to the instructions to apply all the shipments of cotton by William E. Phillips & Co. to the joint bills of William E. Phillips & Co. and the joint drawers whose names he said he could furnish, nor did he believe that such conversation took place, and that if such instructions had been received, he should immediately have given the house of Brander & McKenna notice of them. Plaintiffs introduced the account current of Brander & McKenna with the house of William E. Phillips & Co.

DR. *Messrs. Wm. E. Phillips & Co., in account current and interest account, till 31st August, 1834, and before, with Brander & McKenna.* CR.

1833.					Days.	Interest.
November	16	To your draft, fav. of A. Urquhart, due 17th May	A	$2,291 99	107	63 37
December	26	To do. do. do.	B	373 41		
1834.						
February	19	To do. E. H. Trabur, 2d August -	C	1,350 00	30	9 00
April	17	To charges on 8 cases hats, per schr. Atlantic, 17th April - - - - -		10 57	139	31
April	19	To charges on 1 merchandise, per schr. Atlantic, 19th April - - - - -		12 05	135	36
May	19	To charges on 6 packages merchandise, per Nashville, 19th May - - - -		13 81	105	33
June	17	To charges on 6 packages merchandise, per Powhatan, 17th June - - -		14 11	76	24
August	29	To commission for accepting $4,015 40				
August	29	Cotton proceeds 2,820 78				
		1,194 62		29 87		
		To commission for advancing $1,250 a 2 1-2 p. c.		31 25		
August	29	To balance of interest account - - -		7 79		
August	29	To postages - - - - -		1 50		
				$4,136 35		$73 61

[REC. LV. J. T. 1841.]—4

Dr. *Messrs. Wm. E. Phillips & Co. in account current and interest account, till 31st August, 1834, and before, with Brander & McKenna.* Cr.

					Days.	Interest.
August	29	To balance due in cash, 31st August, 1834 -		$1,315 57	314	$91 83
September	13	To amount paid Wilcox & Fearn, for 10 bales cotton, having rendered you sales 69 bales, per Wayland's flat, of which 10 bales were included in a bill of lading to them [R] 10 bales	471			
		Less drayages, per account sales - -	25 13			
1835.				445 85	301	29 83
March	23	To your draft 6 months and 15 days, fav. Jefferson & Haytn, 5th July - - -	D	2,000 00	6	2 66
March	23	To your draft 6 months and 16 days, fav. Jefferson & Haytn, 6th July - - -	E	3,000 00	5	3 33
April	15	To your draft 8 months, (15th Oct. '34) favor J. W. Marshall, 18th June - - -	F	1,540 94	24	8 21
April	28	To your draft 6 months, (21st Jan., '35) favor Jno. Phillips, 24th July - - -	G	3,000 00		
May	16	To your draft 8 months, (31st Aug., '34) favor James W. Caldwell, 3d May - -	H	2,444 57	69	38 16
July	11	To balance interest, per contra -				27 68
July	11	To balance, per contra - - - -		7,978 22		
				$21,725 15		$201 70

1835.						
July	11	To balance W. E. Phillips & Co., H. F. Jones, and Jno. Phillips' accounts, due 25th July, '35	I	2,444 57		
		To bal'ce J. O. Beasly, account due 14th July, '35		1,200 00		
		Carried forward - -		3,644 57		
		Continued—				
1835.		Amount Brought forward - -		3,644 57		
July	11	To balance W. E. Phillips & Co., and John Phillips, due this day - - -		4,383 48		
1835.				8,028 05		
July	11	To balance, per contra - - - -		49 83		
		To postages - - - - -		4 50	173	2 08
December	31	To balance interest to date to cr. - -				21 33
December	31	To William E. Phillips, to balance transferred to his cr. - - - - -		680 95		
				735 28		23 41
December	31	To amount W. E. Phillips, and Jno. Phillips' account - - - - -		108 75		
December	31	To amount Wm. E. Phillips, H. F. Jones, and Jno. Phillips' account - - -		61 13		

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Dr. *Messrs. Wm. E. Phillips & Co. in account current and interest account, till 31st August, 1834, and before, with Brander & McKenna.* Cr.

				Days.	Interest.
1834.					
May	18	By proceeds 69 bales cotton, per Wayland's flat, due 18th May - - - -	$2,820 78	105	$65 82
August	29	By balance in our favor - - -	1,315 57		
August	29	By balance in our interest - - -			7 79
1835.			$4,136 35		$73 61
March	23	By nett proceeds 30 bales cotton, due 23d March	1,760 99		
Do.		Do. 15 do. do.	858 98		
Do.		Do. 25 do. do.	1,506 36		
Do.		Do. 8 do. do.	486 98	110	154 47
Do.		Do. 17 do. do.	972 35		
Do.		Do. 13 do. do.	825 26		
Do.	28	Do. 10 do. 28 do.	627 82	105	14 65
July	1	Do. 189 do. 1st July -	12,812 18	10	32 58
Do.		By hf. do. 52 do. do.	1,846 55		
Do.		By balance of interest, per contra to cr. -	27 68		
1835.			21,725 15		$201 70
July	11	By balance per contra, due this date - -	7,978 22		
July	11	By balance per contra - - - -	49 83		

		Carried forward - -		8,028 05		
		Continued—				
July	11	Amount brought forward -		8,028 05		
1835.						
August	10	By our order on you, fav. H. Wayland, 10th Aug.		52 50	143	1 68
August	5	By half proceeds 6 bales cotton, 5th August -		160 10	148	21 73
August	5	By proceeds 13 bales cotton - - -		501 35		
December	31	By balance interest to date - - -		21 33		
				735 28		$23 41
December	31	By amount brought back from W. E. P.'s account		680 95		

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Showing the applications of payments on shipments made by the said William E. Phillips & Co. Plaintiffs further introduced the bills of William E. Phillips & Co., marked in said accounts from tho letter A to the letter J inclusive. It was then proved by the plaintiffs, by their witness Williams as aforesaid, that in the year 1836, before the institution of this suit, he presented the accounts current as aforesaid, of the said house of William E. Phillips & Co. to both the partners of said house; that Bell objected to the application of the payments, that William E. Phillips admitted to him, that the payments are all correctly and properly applied, and that this conversation took place after the dissolution of the partnership of William E Phillips & Co., and that said Williams knew of said dissolution; plaintiff then introduced and read as proof, the letter of William E. Phillips & Co. to the house of Brander & McKenna, bearing date March 14th, 1835.

HUNTSVILLE, *March* 14*th*, 1835.

MESSRS. BRANDER & MCKENNA:

DR. SIRS: Please find Wayland's bill *of* lading for forty-eight bales of cotton, which we are in hopes will come safe to hand. We *we* will continue to forward bills for cotton as fast as we can get it together; we are in hopes if any of our cotton has been received, it has been sold for a good price; we shall ship you more cotton than will liquidate all claims against us. Any change in your market as it regards the price of cotton made known unto us would be thankfully received.

Yours respectfully,
WM. E. PHILLIPS & CO.

N. B. All cotton shipped by us you will please sell and place to our credit, and exercise your judgments as to the best time of selling. WM. E. P. & CO.

This being all the proof introduced, the court charged the jury as follows:

That if they believe from the evidence, that at the muturity of this bill drawn by the defendants in this case, and which is the foundation of the present action, the plaintiffs had sufficient funds of William E. Phillips & Co. in their hands to discharge and pay the said bill, and also believed, that the said Horton and Terry were accommodation drawers, for the benefit of William E. Phillips & Co. and their securities only, and that this fact was known to the plaintiffs at the time of the maturity of the said bill, that in the absence of all instructions from the said William E. Phillips & Co. in regard to the application of said funds, the said plaintiffs were bound in law to apply the said funds to the payment of the said bill, and could not hold them for the purpose of applying them to the payment of a bill drawn by the said William E. Phillips & Co. upon the said plaintiffs and accepted by them, not then due, but

to mature at a future day, and that if the said funds of William E. Phillips & Co. in the hands of the said plaintiffs, at the maturity of the said bill which is the foundation of this action, were sufficient to pay and discharge the said bill, that in that case the said bill was extinguished as to all of the defendants, and that there could not be a recovery on it either against the said William E. Phillips or the said Horton and Terry. To which charge of the court the plaintiffs by their counsel except and tender this their bill of exception, and pray that the same may be signed and sealed by the court, which is done accordingly.

WM. CRAWFORD, *Judge.* [L. S.]

I, Benjamin T. Moore, clerk of the district court of the United States of America, for the northern district of Alabama, certify that the above and foregoing pages contain a full, true, and complete transcript of the record and proceedings had in district court aforesaid, in the cause of Brander & McKenna plaintiffs, against William E. Phillips & Co., Rodah Horton and Nathaniel Terry defendants.

In testimony whereof, I hereto subscribe my name, and affix the seal of said district court, at *the* office in Huntsville, [L. S.] this fifth day of September, A. D. eighteen hundred and thirty-nine, and of the Independence of the United States of America the sixty-fourth.

B. T. MOORE, *Clerk Dist. Court.*

And afterwards, to wit, at a term of the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, begun and held in and for said district at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine, the plaintiffs filed the following plea, to wit:

Plaintiffs' Plea.

CIRCUIT COURT OF THE UNITED STATES,
Southern District of Alabama, November Term, 1839.

Come the said plaintiffs by their attorneys, and say that in the record and proceedings as well as in the giving of judgment in the said district court there is manifest error to the damage of the said plaintiffs, and for the errors aforesaid the said plaintiffs pray judgment of the said judgment and that the same may be reversed, cancelled and for nothing held, and for special cause the plaintiffs assign the matter in the bill of exceptions.

GORDGN, CAMPBELL, AND CHANDLER,
For the Plaintiffs.

Defendants' Plea.

Whereupon at the same term the defendants filed their plea in the words and figures following, to wit: and the said appellees by their attorneys come and say there is no error in the record, and